IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.5 OF 2006

Adolfo John Carvalho .... Appellant

V/s.

M/s. Mark Builders & Anr. .... Respondents

Mr. P.A. Kamat for the appellant.

Mr. A.R. Kantak for respondent 1.

CORAM : SMT. RANJANA P. DESAI, J.

DATED : 29TH JUNE 2006.

P.C.

1. The original plaintiff has challenged in this appeal order dated 29/10/2005 passed by the Civil Judge, Senior Division, Panaji, Goa, on Civil Misc. Application No.131/03/B in Special Civil Suit No.84/03/B. The plaintiff claims to be the purchaser of the suit flat under an agreement dated 8/6/2001 executed between him and defendant 1. It is his case that the cost of the flat was Rs.6,75,000/-. As per the payment schedule detailed in the agreement, a sum of Rs.33,750/- was due and payable

by him to defendant 1 on handing over of the possession of the completed flat. Admittedly, the plaintiff had obtained loan from the Indian Overseas Bank by mortgaging the suit flat and defendant 1 has given no objection for the said transaction. The case of the plaintiff is that the amount of Rs.33,750/- was due and payable only on handing over of the completed flat. The plaintiff received letter dated 8/2/2002 from defendant 1 informing that the flat was ready. Defendant 1 demanded an amount of Rs.33,750/- towards the last instalment. He also demanded the money for the extra work. According to the plaintiff, when he inspected the premises, the flat was not complete as per the agreement and also as per the approved plan and, therefore, he sent a legal notice to defendant 1 to which defendant 1 replied calling upon the plaintiff to pay for extra work amounting to Rs. 57,371/-. According to the plaintiff, the said bill is bogus. It appears that the plaintiff did not pay the said amount and therefore, defendant 1 terminated the said agreement by letter dated 22/2/2003. The plaintiff also came to know that defendant 1 had

entered into an agreement dated 17/2/2003 with defendant 2 agreeing to sell the suit flat. It is against the backdrop of these facts that the plaintiff has filed the above suit for declaration, specific performance and other consequential reliefs. The application made by the plaintiff for temporary injunction was rejected by the trial court and, hence, this appeal from order. Respondent 2 has been served however, she has chosen not to remain present in the court nor has she engaged any lawyer.

2. I have heard Mr. Kamat, the learned counsel appearing for the appellant and Mr. Kantak, the learned counsel appearing for respondent 1.

3. The learned counsel for the plaintiff reiterated the same submissions which he had placed for consideration before the trial court. The learned counsel for respondent 1 contended that injunction has rightly been denied to the plaintiff as now third party rights have been created and, at the most, the plaintiff would be entitled to

money and the extent of monetary liability can be decided at the final hearing of the suit. He contended that, therefore, no interference is necessary with the impugned order.

4. Admittedly, defendant 1 has entered into an agreement with defendant 2. It appears that third party rights have been created. But at the same time, it must also be noted that on the basis of the suit flat, the plaintiff has taken loan from the Indian Overseas Bank. I am informed that the trial of the suit has already started. The possession of the suit flat has not been delivered by defendant 1 to defendant 2. In the circumstances of the case, in my opinion, though no interference is necessary with the impugned order, it is only proper that respondent 2, who is the purchaser of the suit flat does not create any third party interest in the suit flat till such time as the suit is heard and finally decided. Needless to say that the rights and liabilities of the parties will be decided at the conclusion of the suit. In the circumstances of the case,

this appeal can be disposed of with a direction to respondent 2 not to dispose of, alienate, encumber the suit flat or create third party rights therein till the suit is finally disposed of. The trial court is directed to dispose of the suit as expeditiously as possible and at any rate within a period of one year from today.

5. Appeal from order is disposed of in the aforestated terms. In view of this Civil Application No.12 of 2006 does not survive and is disposed of.

(SMT. RANJANA DESAI, J.)